

1 Devin Andrich
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5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9
10 Devin Andrich, a single man,

11 No. CV-18-02766-PHX-DLR

12 Plaintiff,

13 v.
14 **FIRST AMENDED COMPLAINT**

15 Navient Solutions, Inc., a Delaware
16 corporation; Navient Solutions, LLC, a
17 foreign limited liability company;
Pennsylvania Higher Education Assistance
18 Agency, a Pennsylvania corporation;
Performant Recovery Services, Inc., a
19 California corporation; and DOES I-X, as
individuals or entities,

(Violation of 15 U.S.C. §1681 et seq.;
Violation of 15 U.S.C. §1692 et seq.;
Breach of Contract; Breach of the
Covenant of Good Faith & Fair Dealing;
Misrepresentation And Defamation)

20 Defendants.

21
22 Plaintiff, Devin Andrich, pursuant to this Court's Order dated September 1, 2018
23 (Dkt. #9), files his First Amended Complaint against Defendants, alledging as follows:

24
25 **PARTIES, JURISDICTION AND VENUE**

26 1. Plaintiff Devin Andrich is a resident of Maricopa County, Arizona
27 ("Andrich" or "Plaintiff").
28

1 2. On information and belief, Defendant Navient Solutions, Inc., was at all
2 times relevant, a Delaware corporation, authorized to do business in the State of Arizona.
3

4 3. On information and belief, Defendant Navient Solutions, LLC, was at all
5 times relevant, a Delaware limited liability company, authorized to do business in the
6 State of Arizona.

7 4. Defendants Navient Solutions, Inc. and Defendant Navient Solutions, LLC
8 are collectively herein referred to as, “Navient.”
9

10 5. On information and belief, Defendant Pennsylvania Higher Education
11 Assistance Agency, Inc. (“PHEAA”), was at all times relevant, a Pennsylvania
12 corporation, authorized to do business in the State of Arizona.
13

14 6. On information and belief, Defendant Performant Recovery Services, Inc.
15 (“Performant”), was at all times relevant, a Delaware corporation, authorized to do
16 business in the State of Arizona.
17

18 7. Defendants, Does I-X, as individuals or entities (“Does”), and the unknown
19 heirs and devisees of any of the Does, as natural persons, who may be deceased, with a
20 singular or plural, or fictitious names designating an individual or individuals, masculine
21 or feminine, or legal entities, whose present identities are unknown to Plaintiff. Plaintiff
22 will request leave of the Court to insert the true identity of any such Defendants when
23 discovered as if correctly named originally and who are liable for all or part of Plaintiff’s
24 claims herein.
25

26 8. Defendants caused events or allowed acts or events to occur in Maricopa
27 County, Arizona out of which the following causes of action arise.
28

9. This Court has jurisdiction over this action pursuant to 15 U.S.C. §1681, 15 U.S.C. §1692 et seq., 28 U.S.C. §§1331, 1367 and 2201(a).

10. The Court also has jurisdiction over this action pursuant to 28 U.S.C. §1332, based on the parties' diversity of citizenship and because the amount in controversy exceeds Seventy Five Thousand Dollars (\$75,000).

11. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391, and this Court has personal jurisdiction over Defendants and each of them, by reason of the fact that, among other things, many of the events giving rise to this action arose in Arizona, including within Maricopa County.

FACTUAL ALLEGATIONS

Plaintiff Enters Into a Loan Agreement With Original Loan Servicer Sallie Mae And Sallie Mae Assigns the Loan Agreement to Defendant Navient

12. On/about October 5, 2003, Plaintiff entered into a written agreement with federal student loan servicer, Sallie Mae (the “Loan Agreement”).

13. Under the terms of the Loan Agreement, Sallie Mae consolidated all of Plaintiff's student loans federally insured by guarantor, the United States of America, or its designated agent.

14. On information and belief, under the terms of the Loan Agreement the Plaintiff's consolidated student loans are each classified as, a "Federally Guaranteed Student Loan."

15. On information and belief, under the terms of the Loan Agreement, Plaintiff would make monthly payments to Sallie Mae or its designated assignee.

1 16. Under the terms of the Loan Agreement and the section labeled
2 “Borrower’s Rights and Responsibilities,” Paragraph 2, Plaintiff would update his
3 permanent address with Sallie Mae or its designated assignee when Plaintiff changed
4 permanent mailing addresses.
5

6 17. Under the terms of the Loan Agreement and the section labeled
7 “Borrower’s Rights and Responsibilities” Paragraph 2, Plaintiff would notify Sallie Mae
8 or its designated assignee when Plaintiff’s status changed that would affect Plaintiff’s
9 Loan Agreement.
10

11 18. Under the terms of the Loan Agreement, Sallie Mae or its designated
12 assignee would service Plaintiff’s consolidated student loans at a fixed interest rate of
13 3.625% per annum until Plaintiff satisfied the outstanding loan balance.
14

15 19. Under the terms of the Loan Agreement and Paragraph 8 of Borrower’s
16 Rights and Responsibilities, “Upon request, [Sallie Mae or its designated assignee] will
17 provide [Plaintiff] with a deferment application that explains [Plaintiff’s] eligibility
18 requirements,” to Plaintiff’s permanent address.
19

20 20. Under the terms of the Loan Agreement and Paragraph 8 of Borrower’s
21 Rights and Responsibilities, Plaintiff has a right to defer or postpone repayments under
22 the Loan Agreement to Sallie Mae or its designated assignee, while Plaintiff is,
23 “...experiencing an economic hardship as determined by federal law.”
24

25 21. Under the terms of the Loan Agreement and Paragraph 9 of Borrower’s
26 Rights and Responsibilities, Sallie Mae or its designated assignee is required to grant
27
28

1 Plaintiff a forbearance if Plaintiff has, “a monthly debt burden for Title IV loans that
2 collectively equals or exceeds 20% of [Plaintiff’s] total monthly gross income.”
3

4 22. On information and belief Sallie Mae and its assignees entered into an
5 agreement with loan guarantor, Defendant PHEAA, regarding the servicing of all
6 federally insured student loans, including Plaintiff’s consolidated student loans (the
7 “Guarantor Agreement”).
8

9 23. On information and belief, under the terms of the Guarantor Agreement,
10 Plaintiff is an intended third party beneficiary.
11

12 24. On information and belief, under the terms of the Guarantor Agreement,
13 Defendant Navient is required to deliver notices and correspondence to the borrower’s
14 permanent address that the borrower provides to Defendant Navient.
15

16 25. On information and belief, under the terms of the Guarantor Agreement,
17 Defendant Navient is required provide the borrower with deferment or forbearance
18 applications upon the borrower’s written request.
19

20 26. On information and belief, under the terms of the Guarantor Agreement,
21 Defendant Navient is required to review the borrower’s deferment or forbearance
22 applications, prior to declaring a default under the loan agreement with the borrower.
23

24 27. On information and belief, under the terms of the Guarantor Agreement,
25 Defendant Navient is required to report to PHEAA, the results of reviewing a borrower’s
26 deferment or forbearance application when declaring a default under the loan agreement
27 with the borrower.
28

1 28. On information and belief, Sallie Mae notified Plaintiff that Sallie Mae sold
2 or otherwise assigned the Loan Agreement to Defendant Navient.
3

4 29. Under the terms of the Loan Agreement, Defendant Navient as the Loan
5 Agreement's assignee was bound by the terms of the Loan Agreement originally entered
6 into between Sallie Mae and Plaintiff.
7

8 **Plaintiff While Incarcerated Mails Numerous Correspondence to Defendant Navient
9 Updating Plaintiff's Permanent Addresses And Requests Deferment And
10 Forbearance Applications Due to Plaintiff's Documented Economic Hardship, But
11 Defendant Navient Ignores Plaintiff's Correspondence**

12 30. Plaintiff incorporates the allegations in the paragraphs above as if set forth
13 fully herein.
14

15 31. On/about February 18, 2014, the State of Arizona indicted Plaintiff on
16 suspicion of misappropriation of client funds in Maricopa County Superior Court Case
17 No.: CR2014-108114 – *State of Arizona v. Andrich.*
18

19 32. On July 8, 2015, the *State of Arizona v. Andrich* Court sentenced Plaintiff
20 to three-and-one-half (3.5) years in prison.
21

22 33. On July 10, 2015, Plaintiff began serving his prison sentence at the Arizona
23 Department of Corrections (“ADC”).
24

25 34. On August 17, 2015, ADC transferred Plaintiff to a prison in Tucson,
26 Arizona.
27

28 35. On December 22, 2015, Plaintiff drafted and mailed a letter via United
States mail to Defendant Navient.
29

1 36. Plaintiff's December 22, 2015 letter to Defendant Navient informed
2 Defendant Navient of Plaintiff's then-permanent address in Tucson, Arizona.
3

4 37. Plaintiff's December 22, 2015 letter to Defendant Navient enclosed a form
5 created by Defendant Navient that Defendant Navient instructs borrowers such a Plaintiff
6 to use when requesting a student loan payment defermant or forbearance under the Loan
7 Agreement.
8

9 38. Plaintiff's December 22, 2015 letter to Defendant Navient was not returned
10 to Plaintiff's then-permanent address as "undeliverable."
11

12 39. Between December 22, 2015, and the date of this First Amended
13 Complaint, Defendant Navient neither responded to Plaintiff's December 22, 2015
14 request for a student loan payment defermant or forbearance, nor mailed any
15 correspondence to Plaintiff's then-permanent address, warning Plaintiff of a pending or
16 possible default under the Loan Agreement.
17

18 40. On October 21, 2016, Plaintiff drafted and mailed a letter via United States
19 mail to Defendant Navient, updating Plaintiff's then-permanent address and requesting
20 the status of Plaintiff's student loan payment defermant or forbearance application
21 submitted to Defendant Navient, or alternatively, requesting a student loan payment
22 defermant or forbearance.
23

24 41. Plaintiff's October 21, 2016 letter to Defendant Navient informed
25 Defendant Navient of Plaintiff's then-permanent address in Safford, Arizona.
26

27 42. Plaintiff's October 21, 2016 letter to Defendant Navient was not returned to
28 Plaintiff's then-permanent address as "undeliverable."
29

1 43. Between October 21, 2016 and the date of this First Amended Complaint,
2 Defendant Navient neither responded to Plaintiff's October 21, 2016 request for a student
3 loan payment defermant or forbearance, nor mailed any correspondence to Plaintiff,
4 warning Plaintiff of a pending or possible default under the Loan Agreement.
5

6

7 **Plaintiff is Released From Prison And Discovers That Defendant Navient Did Not**
8 **Enter Plaintiff's Student Loan Into Deferment or Forbearance, But Instead**
9 **Immediately Defaulted Plaintiff's Student Loan to Illegally Recoup Funds From**
10 **Federal Loan Guarantor PHEAA**

11 44. Plaintiff incorporates the allegations in the paragraphs above as if set forth
12 fully herein.

13 45. On September 1, 2017, Plaintiff was released from prison and eligible to
14 attend college.

15 46. On October 1, 2017, Plaintiff drafted and mailed a letter via United States
16 mail to Defendant Navient.

17 47. Plaintiff's October 1, 2017 letter to Defendant Navient informed Defendant
18 Navient of Plaintiff's updated permanent address in Phoenix, Arizona.

20 48. Plaintiff's October 1, 2017 letter to Defendant Navient requested a student
21 loan payment defermant or forbearance under the Loan Agreement.

23 49. On November 1, 2017, Navient mailed a letter via United States mail to
24 Plaintiff, stating that Defendant Navient could not approve Plaintiff for a student loan
25 payment defermant or forbearance under the Loan Agreement, because Defendant
26 Navient declared and entered Plaintiff's default under the Loan Agreement.
27

28

1 50. Upon Defendant Navient declaring and entering Plaintiff's default under
2 the Loan Agreement, Defendant Navient made numerous false statements to Defendant
3 PHEAA that Plaintiff defaulted under the Loan Agreement.
4

5 51. Upon Defendant Navient declaring and entering Plaintiff's default under
6 the Loan Agreement, Defendant Navient made false numerous statements to several
7 credit reporting agencies that Plaintiff defaulted under the Loan Agreement.
8

9 52. Upon Defendant Navient declaring and entering Plaintiff's default under
10 the Loan Agreement, Defendant Navient subsequently sold or otherwise assigned its
11 rights under the Loan Agreement to Defendant PHEAA.
12

13 53. Upon Defendant PHEAA acquiring the Defendant Navient's declaring and
14 rights under the Loan Agreement, Defendant PHEAA made numerous false statements to
15 several credit reporting agencies that Plaintiff defaulted under the Loan Agreement.
16

17 54. On/about December 1, 2017, Defendant PHEAA retained debt collector
18 Defendant Performant to collect from Plaintiff, the purported outstanding loan balance,
19 default interest and fees under the Loan Agreement.
20

21 55. On March 21, 2018, Defendant Performant mailed Plaintiff a letter,
22 demanding One Hundred Ninety One Thousand Six Hundred Seven Dollars and 43/100
23 (\$191,607.43) from Plaintiff, stating that Defendant Performant's March 21, 2018
24 correspondence was from a debt collector and an attempt to collect a debt.
25

26 56. As a result of Defendant Navient entering a Loan Agreement default
27 against Plaintiff, Plaintiff cannot apply for federal loan programs necessary for Plaintiff
28 to pay tuition and attend college.

1 57. As a result of Defendant Navient entering a Loan Agreement default
2 against Plaintiff, as of the date of this First Amended Complaint, Plaintiff has missed
3 three (3) semesters of school neccesary for Plaintiff work in a trade or profession other
4 than practicing law.
5

6 58. Under the terms of Plaintiff's sentencing and probation, the State of
7 Arizona and *State v. Andrich* Court require Plaintiff to attend school and obtain gainful,
8 lucrative employment in furtherance of paying a Criminal Restitution Order.
9

10 59. As of the date of Plaintiff's First Amended Complaint, Plaintiff contacted
11 Equifax, Experian and TransUnion to dispute the accuracy of the information that
12 Defendants, as well as, Equifax, Experian and TransUnion reported about Plaintiff.
13

14 60. Beginning April 14, 2018, Plaintiff contacted Defendants, advising
15 Defendants that its trade lines on Plaintiff's Equifax, Experian and TransUnion credit
16 reports was reflecting that Plaintiff defaulted under the Loan Agreement and that it was
17 causing Plaintiff problems with being approved for credit.
18

19 61. Depsite Defendants PHEAA's and Performant's actual knowledge that
20 Plaintiff objectively did not default under the Loan Agreement, on May 4, 2018,
21 Defendant Performant (on behalf of Defendant PHEAA), delivered correspondence to
22 Plaintiff stating that Defendant Performant and PHEAA would not remove the trade line
23 on Plaintiff's Equifax, Experian and TransUnion credit reports that Plaintiff defaulted
24 under the Loan Agreement, but rather add language, indicating that the matter was in
25 dispute.
26
27

62. On November 7, 2018, Plaintiff memorialized Defendants' ongoing violations of the Fair Credit Reporting Act against Plaintiff's credit reports in correspondence to Equifax, Experian and TransUnion.

LEGAL CLAIMS

COUNT ONE

**(Defendants Navient, Violated the Fair Credit Reporting Act 15 U.S.C. §1681 et seq.
When Making False Statements to Numerous Credit Reporting Agencies That
Plaintiff Defaulted on Federally Guaranteed Loan Agreement)**

63. Plaintiff incorporates the allegations in the paragraphs above as if set forth fully herein.

64. Under the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq. (“FCRA”) furnishers of credit information have a duty under the FCRA to investigate disputes from consumers as to the accuracy of information reported about them, *to wit*:

After receiving notice pursuant to section 611(a)(2) [§ 1681i] of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall:

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2) [§ 1681*i*];

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for

purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly –

- (i) modify that item of information;
- (ii) delete that item of information; or
- (iii) permanently block the reporting of that item of information.

See 15 U.S.C. § 1681s-2(b)(1).

65. On or around November 7, 2018, Plaintiff contacted Equifax, Experian and TransUnion to dispute the accuracy of the information being reported about him.

66. Upon information and belief, pursuant to 15 U.S.C. § 1681i(a)(2), Defendant Navient received notification of this dispute from Equifax, Experian and TransUnion.

67. By the time Defendant Navient received this credit bureau dispute, Defendant Navient, directly and via Defendant Navient's attorneys of record, had already been contacted on numerous occasions by Plaintiff, advising Defendant Navient that its trade line on Plaintiff's Equifax, Experian and TransUnion credit reports was reflecting that Plaintiff defaulted under the Loan Agreement and that it was causing Plaintiff problems with being approved for credit.

68. Defendant Navient failed to conduct a reasonable investigation into the accuracy of information related to the disputed trade line, in violation of Section 1681s-2(b)(1).

69. Notwithstanding Defendant Navient's actual knowledge that Defendant Navient breached its duties under the Loan Agreement terms, specifically Borrower's Rights and Responsibilities Paragraphs 2, 8, & 9; declared a default to Plaintiff and

1 Defendant PHEAA; and made false statements to Defendant PHEAA, Equifax, Experian
2 and TransUnion that Plaintiff defaulted under the Loan Agreement, Defendant Navient's
3 failure to conduct a reasonable investigation of the accuracy of its reporting of this
4 adverse information shows a reckless disregard for Plaintiff's rights under the FCRA.
5

6 70. In addition to the violation as described above, Defendant Navient failed to
7 satisfy its duty under Section 1681s-2(b) of updating incomplete or inaccurate
8 information it had previously reported to Equifax, Experian and TransUnion upon receipt
9 of each notice from Equifax, Experian and TransUnion that Plaintiff disputed the
10 accuracy of the previously reported information.

12 71. Defendant Navient's failure to report that Plaintiff had not defaulted under
13 the Loan Agreement was a failure to accurately update the information because it was
14 "misleading in such a way and to such an extent that it [could] be expected to have an
15 adverse effect" on Plaintiff. *Gorman v. Wolpoff & Abramson, LLP, et al.*, 584 F.3d 1147
16 (9th Cir. 2009); *See also Saunders v. Branch Banking & Trust Co. of Va.*, 526 F.3d 142
17 (4th Cir. 2008).

20 72. As a direct and proximate result of Defendant Navient's willful and/or
21 negligent refusal to comply with the FCRA as outlined above, Plaintiff has suffered
22 substantial loss and damage including, but not limited to: economic loss due to Plaintiff's
23 inability to apply for and obtain federally-insured student loans, loss of opportunity to
24 obtain credit, damage to reputation, expenditure of considerable time and out-of-pocket
25 expenses, worry, fear, distress, frustration and embarrassment, entitling Plaintiff to an
26
27
28

1 award of actual damages in amounts to be proved at trial, plus costs of this action
2 pursuant to 15 U.S.C. § 1681o.

3 73. As a direct and proximate cause Defendant Navient's negligent or willful
4 failure to perform its duties under the Fair Credit Reporting Act, Plaintiff is chilled from
5 applying to and taking college courses, necessary for Plaintiff to pursue a new career
6 after Plaintiff's incarceration.

7 74. As a direct and proximate cause Defendant Navient's negligent or willful
8 failure to perform its duties under the Fair Credit Reporting Act, Plaintiff has suffered
9 damages, mental anguish, suffering, humiliation and embarrassment, due to Plaintiff's
10 inability to obtain federal student loans necessary for Plaintiff to attend college; obtain
11 new skills and degrees and use the new skills and degrees to obtain gainful, lucrative
12 employment as required under the *State v. Andrich* terms of Plaintiff's probation in order
13 to satisfy a Criminal Restiution Order.

14 75. Defendant Navient's complete and utter indifference as to its obligations
15 under the FCRA reveals a conscious disregard of the rights of Plaintiff, and the injuries
16 suffered by Plaintiff are attended by circumstances of fraud, malice, and willful and
17 wanton misconduct, calling for an assessment of punitive damages against Defendant
18 Navient, pursuant to 15 U.S.C. § 1681n(a)(2).

19 THEREFORE, Plaintiff requests Judgment against Defendant Navient, as follows:

20 (a) For an Order declaring that Defendant Navient has violated Plaintiff's
21 rights under the Fair Credit Reporting Act 15 U.S.C. §1681 et seq.;

22 (b) For Plaintiff's actual, punitive and statutory damages, provided by 15
23 U.S.C. § 1681n(2) in an amounts to be proven at trial;

- (c) For pre-interest and post-interest (if applicable) at the highest rate allowed by law;
- (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses as provided for by 15 U.S.C. § 1681n(3) & 15 U.S.C. § 1681o(2); and
- (e) For such other and further relief as this Court deems just and proper under the circumstances.

COUNT TWO

(Defendant PHEAA And Defendant PHEAA's Agent, Defendant Performant, Violated the Fair Credit Reporting Act 15 U.S.C. §1681 et seq. When Making False Statements to Numerous Credit Reporting Agencies That Plaintiff Defaulted on Federally Guaranteed Loan Agreement)

76. Plaintiff incorporates the allegations in the paragraphs above as if set forth fully herein.

77. After informed by Plaintiff that under the terms of the Loan Agreement, Plaintiff updated his permanent address and sought a deferment or forbearance, Defendant Navient ignored Plaintiff's request, breached the terms of the Loan Agreement and declared and entered a Loan Agreement default against Plaintiff.

78. After entering a default under the Loan Agreement, Defendant Navient sold or otherwise assigned Defendant Navient's rights under the Loan Agreement to Defendant PHEAA.

79. Under the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq. (“FCRA”) furnishers of credit information have a duty under the FCRA to investigate disputes from consumers as to the accuracy of information reported about them, *to wit:*

After receiving notice pursuant to section 611(a)(2) [§ 1681*i*] of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall:

- (A) conduct an investigation with respect to the disputed information;
- (B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2) [§ 1681*i*];
- (C) report the results of the investigation to the consumer reporting agency;
- (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and
- (E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly –
 - (i) modify that item of information;
 - (ii) delete that item of information; or
 - (iii) permanently block the reporting of that item of information.

See 15 U.S.C. § 1681s-2(b)(1).

80. On or around November 7, 2018, Plaintiff contacted Equifax, Experian and TransUnion to dispute the accuracy of the information being reported about him.

81. Upon information and belief, pursuant to 15 U.S.C. § 1681i(a)(2), Defendants PHEAA and Performant received notification of this dispute from Equifax, Experian and TransUnion.

82. By the time Defendants PHEAA and Performant received this credit bureau dispute, Defendants PHEAA and Performant, had already been contacted on numerous occasions by Plaintiff, advising Defendants PHEAA and Performant that its trade line on Plaintiff's Equifax, Experian and TransUnion credit reports was reflecting that Plaintiff

1 defaulted under the Loan Agreement and that it was causing Plaintiff problems with
2 being approved for credit.

3 83. Defendants PHEAA and Performant failed to conduct a reasonable
4 investigation into the accuracy of information related to the disputed trade line, in
5 violation of Section 1681s-2(b)(1).

6 84. Notwithstanding Defendants PHEAA's and Performant's actual knowledge
7 that Defendants Navient and PHEAA breached their duties under the Loan Agreement
8 terms, specifically Borrower's Rights and Responsibilities Paragraphs 2, 8, & 9; continued
9 entering a default against Plaintiff; and made false statements to Equifax, Experian and
10 TransUnion that Plaintiff defaulted under the Loan Agreement, Defendants PHEAA's
11 and Performant's failure to conduct a reasonable investigation of the accuracy of its
12 reporting of this adverse information shows a reckless disregard for Plaintiff's rights
13 under the FCRA.

14 85. In addition to the violation as described above, Defendants PHEAA and
15 Performant failed to satisfy their duties under Section 1681s-2(b) of updating incomplete
16 or inaccurate information it had previously reported to Equifax, Experian and TransUnion
17 upon receipt of each notice from Equifax, Experian and TransUnion that Plaintiff
18 disputed the accuracy of the previously reported information.

19 86. Defendants PHEAA's and Performant's failure to report that Plaintiff had
20 not defaulted under the Loan Agreement was a failure to accurately update the
21 information because it was "misleading in such a way and to such an extent that it [could]
22 be expected to have an adverse effect" on Plaintiff. *Gorman v. Wolpoff & Abramson*,

1 *LLP, et al.*, 584 F.3d 1147 (9th Cir. 2009); *See also Saunders v. Branch Banking & Trust*
 2 *Co. of Va.*, 526 F.3d 142 (4th Cir. 2008).

3 87. As a direct and proximate result of Defendants PHEAA's and Performant's
 4 willful and/or negligent refusal to comply with the FCRA as outlined above, Plaintiff has
 5 suffered substantial loss and damage including, but not limited to: economic loss due to
 6 Plaintiff's inability to apply for and obtain federally-insured student loans, loss of
 7 opportunity to obtain credit, damage to reputation, expenditure of considerable time and
 8 out-of-pocket expenses, worry, fear, distress, frustration and embarrassment, entitling
 9 Plaintiff to an award of actual damages in amounts to be proved at trial, plus costs of this
 10 action pursuant to 15 U.S.C. § 1681o.
 11

12 88. As a direct and proximate cause Defendants PHEAA's and Performant's
 13 negligent or willful failure to perform its duties under the FCRA, Plaintiff is chilled from
 14 applying to and taking college courses, necessary for Plaintiff to pursue a new career
 15 after Plaintiff's incarceration.
 16

17 89. As a direct and proximate cause Defendants PHEAA's and Performant's
 18 negligent or willful failure to perform its duties under the FCRA, Plaintiff has suffered
 19 damages, mental anguish, suffering, humiliation and embarrassment, due to Plaintiff's
 20 inability to obtain federal student loans necessary for Plaintiff to attend college; obtain
 21 new skills and degrees and use the new skills and degrees to obtain gainful, lucrative
 22 employment as required under the *State v. Andrich* terms of Plaintiff's probation in order
 23 to satisfy a Criminal Restitution Order.
 24

90. Defendants PHEAA's and Performant's complete and utter indifference as to its obligations under the FCRA reveals a conscious disregard of the rights of Plaintiff, and the injuries suffered by Plaintiff are attended by circumstances of fraud, malice, and willful and wanton misconduct, calling for an assessment of punitive damages against Defendant Navient, pursuant to 15 U.S.C. § 1681n(a)(2).

THEREFORE, Plaintiff requests Judgment against Defendants PHEAA and Performant, as follows:

- (a) For an Order declaring that Defendants PHEAA and Performant have violated Plaintiff's rights under the Fair Credit Reporting Act 15 U.S.C. §1681 et seq.;
- (b) For Plaintiff's actual, punitive and statutory damages, provided by 15 U.S.C. § 1681n(2) in an amounts to be proven at trial;
- (c) For pre-interest and post-interest (if applicable) at the highest rate allowed by law;
- (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses as provided for by 15 U.S.C. § 1681n(3) & 15 U.S.C. § 1681o(2); and
- (e) For such other and further relief as this Court deems just and proper under the circumstances.

COUNT THREE

**(Defendant Performant Violated the Fair Debt Collections Practices Act 15 U.S.C.
§1682 et seq. When Attempting Collection of a Debt That Does Not Exist
Under the Loan Agreement)**

91. Plaintiff incorporates the allegations in the paragraphs above as if set forth fully herein.

92. On March 21, 2018, Defendant Performant attempted collecting debt from

1 Plaintiff that is not valid, because Plaintiff did not default under a Loan Agreement with
2 Defendant Navient, as assigned to Defendant PHEAA.

3 93. On March 21, 2018, Defendant Performant attempted collecting more funds
4 from Plaintiff than Plaintiff owes under the Loan Agreement.
5

6 94. On March 21, 2018, Defendant Performant attempted collecting interest,
7 fees and expenses that are not permitted by law or under the Loan Agreement.
8

9 95. On March 21, 2018, Defendant Performant attempted using deceptive
10 methods to collect amounts that are not due under the Loan Agreement.
11

12 96. On March 21, 2018, Defendant Performant made statements to credit
13 reporting agencies concerning Plaintiff that Plaintiff defaultd under the Loan Agreement
14 and owes amounts that are not due under the Loan Agreement.
15

16 97. Between March 21, 2018, and the date of this First Amended Complaint,
17 Defendant Performant made no reasonable attempts to verify either any default under the
18 Loan Agreement, or validity of the alledge debt under the Loan Agreement.
19

20 98. Defendant Performant's acts and omissions detalied above violate and
21 continue to violate the Fair Debt Collections Practices Act 15 U.S.C. §1682 et seq.
22

23 THEREFORE, Plaintiff requests Judgment against Defendant Performant as
24 follows:
25

26 (a) For an Order declaring that Defendant Performant violated Plaintiff's rights
27 under the Fair Debt Collections Practices Act 15 U.S.C. §1682 et seq.;

28 (b) For Plaintiff's compensatory, consequential, incidental and punitive
damages in an amount to be proven at trial;

29 (c) For pre-interest and post-interest (if applicable) at the highest rate allowed
30

1 by law;

2 (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses;
3 and

4 (e) For such other and further relief as this Court deems just and proper under
5 the circumstances.

6 **COUNT FOUR**

7 **(Defendant Navient Breached the Terms of a Written Loan Agreement With
8 Plaintiff When Refusing to Communicate With Plaintiff at Permanent Addresses
9 Plaintiff Provided to Defendant Navient And Reviewing Plaintiff's Requests for a
10 Deferment or Forbearance Under the Terms of the Loan Agreement, Opting
11 Instead to Declare And Enter a Default Under the
12 Loan Agreement Against Plaintiff)**

13 99. Plaintiff incorporates the allegations in the paragraphs above as if set forth
14 fully herein.

15 100. The Loan Agreement terms required Defendant Navient to deliver
16 correspondence and notices to Plaintiff at the permanent address that Plaintiff updated in
17 writing to Defendant Navient.

18 101. The Loan Agreement terms require, "Upon [Plaintiff's] request, [Defendant
19 Navient] will provide [Plaintiff] with a deferment application that explains [Plaintiff's]
20 eligibility requirements.

21 102. The Loan Agreement Agreement terms give Plaintiff a right to defer or
22 postpone repayments to Defendant Navient, while Plaintiff is, "...experiencing an
23 economic hardship as determined by federal law."

24 103. The Loan Agreement Agreement terms require Defendant Navient to grant
25 Plaintiff a forbearance if Plaintiff has, "a monthly debt burden for Title IV loans that
26 collectively equals or exceeds 20% of [Plaintiff's] total monthly gross income."

1 104. Defendant Navient breached the Loan Agreement terms with Plaintiff on
2 December 22, 2015, when refusing to communicate with or otherwise send
3 correspondence and notices to Plaintiff at Plaintiff's updated permanent address Plaintiff
4 identified to Defendant Navient.
5

6 105. Defendant Navient breached the Loan Agreement terms with Plaintiff on
7 October 21, 2016, when refusing to communicate with or otherwise send correspondence
8 and notices to Plaintiff at Plaintiff's updated permanent address Plaintiff identified to
9 Defendant Navient.
10

11 106. Defendant Navient breached the Loan Agreement terms with Plaintiff when
12 refusing to provide Plaintiff with a deferment application that explains Plaintiff's
13 eligibility requirements at Plaintiff's permanent address provided to Plaintiff.
14

15 107. Defendant Navient breached the Loan Agreement terms with Plaintiff when
16 denying Plaintiff a right to defer or postpone repayments to Defendant Navient, while
17 Plaintiff is, "...experiencing an economic hardship as determined by federal law."
18

19 108. Defendant Navient breached the Loan Agreement terms with Plaintiff when
20 refusing to send correspondence to Plaintiff's current mailing addresses in 2015 and
21 2016, informing Plaintiff about any steps Plaintiff should take to avoid or otherwise
22 prevent Plaintiff's possible default under the Loan Agreement.
23

24 109. Defendant Navient breached the Loan Agreement terms with Plaintiff when
25 refusing to consider or grant Plaintiff a forbearance, despite Plaintiff having, "a monthly
26 debt burden for Title IV loans that collectively equals or exceeds 20% of [Plaintiff's]
27 total monthly gross income."
28

110. Defendant Navient breached the Loan Agreement terms with Plaintiff when
entering a default under the Loan Agreement against Plaintiff.

111. As a result of Defendant Navient's breaching the Loan Agreement terms
with Plaintiff, Plaintiff has suffered economic losses to be proven at trial, but not less
than One Hundred Ninety One Thousand Six Hundred Seven Dollars and 43/100
(\$191,607.43).

THEREFORE, Plaintiff requests Judgment against Defendant Navient, as follows:

- (a) For an Order declaring that Defendant Navient, breached the written Loan Agreement with Plaintiff to service Plaintiff's federally guaranteed student loans;
- (b) For Plaintiff's compensatory, consequential, incidental and economic damages in an amount to be proven at trial;
- (c) For pre-interest and post-interest (if applicable) at the highest rate allowed by law;
- (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses; and
- (e) For such other and further relief as this Court deems just and proper under the circumstances.

COUNT FIVE

**(Defendant Navient Breached the Covenant of Good Faith And Fair Dealing Under
a Written Loan Agreement With Plaintiff When Refusing to Both Communicate
With Plaintiff at Permanent Addresses Plaintiff Provided to Defendant Navient,
And Reviewing Plaintiff's Requests for a Deferment or Forbearance Under the
Terms of the Loan Agreement, Opting Instead to Declare And Enter a Default
Under the Loan Agreement Against Plaintiff)**

112. Plaintiff incorporates the allegations in the paragraphs above as if set forth fully herein.

113. Defendant Navient and Plaintiff were parties to a written Loan Agreement.

1 114. A party to an agreement has a duty to act fairly and in good faith. This duty
2 is required by law and need not be in writing, because it is implied in every agreement.
3

4 115. The Loan Agreement terms required Defendant Navient to deliver
5 correspondence and notices to Plaintiff at the permanent address that Plaintiff updated in
6 writing to Defendant Navient.

7 116. The Loan Agreement terms require, “Upon [Plaintiff’s] request, [Defendant
8 Navient] will provide [Plaintiff] with a deferment application that explains [Plaintiff’s]
9 eligibility requirements.

10 117. The Loan Agreement Agreement terms give Plaintiff a right to defer or
11 postpone repayments to Defendant Navient, while Plaintiff is, “...experiencing an
12 economic hardship as determined by federal law.”

13 118. The Loan Agreement Agreement terms require Defendant Navient to grant
14 Plaintiff a forbearance if Plaintiff has, “a monthly debt burden for Title IV loans that
15 collectively equals or exceeds 20% of [Plaintiff’s] total monthly gross income.”

16 119. Defendant Navient breached its duty of good faith and fair dealing to
17 Plaintiff on December 22, 2015, when refusing to communicate with or otherwise send
18 correspondence and notices to Plaintiff at Plaintiff’s updated permanent address Plaintiff
19 identified to Defendant Navient.

20 120. Defendant Navient breached its duty of good faith and fair dealing to
21 Plaintiff on October 21, 2016, when refusing to communicate with or otherwise send
22 correspondence and notices to Plaintiff at Plaintiff’s updated permanent address Plaintiff
23 identified to Defendant Navient.

1 121. Defendant Navient breached its duty of good faith and fair dealing to
2 Plaintiff when refusing to provide Plaintiff with a deferment application that explains
3 Plaintiff's eligibility requirements at Plaintiff's permanent address provided to Plaintiff.
4

5 122. Defendant Navient breached its duty of good faith and fair dealing to
6 Plaintiff when denying Plaintiff a right to defer or postpone repayments to Defendant
7 Navient, while Plaintiff is, "...experiencing an economic hardship as determined by
8 federal law."

9 123. Defendant Navient breached its duty of good faith and fair dealing to
10 Plaintiff when refusing to send correspondence to Plaintiff's current mailing addresses in
11 2015 and 2016, informing Plaintiff about any steps Plaintiff should take to avoid or
12 otherwise prevent Plaintiff's possible default under the Loan Agreement.

13 124. Defendant Navient breached its duty of good faith and fair dealing to
14 Plaintiff when refusing to consider or grant Plaintiff a forbearance, despite Plaintiff
15 having, "a monthly debt burden for Title IV loans that collectively equals or exceeds 20%
16 of [Plaintiff's] total monthly gross income."

17 125. Defendant Navient breached its duty of good faith and fair dealing to
18 Plaintiff when entering a default under the Loan Agreement against Plaintiff.

19 126. As a result of Defendant Navient breaching its duty of good faith and fair
20 dealing to Plaintiff, Plaintiff has suffered economic losses to be proven at trial, but not
21 less than One Hundred Ninety One Thousand Six Hundred Seven Dollars and 43/100
22 (\$191,607.43).

23 THEREFORE, Plaintiff requests Judgment against Defendant Navient, as follows:

- (a) For an Order declaring that Defendant Navient breached its duty of good faith and fair dealing to Plaintiff under the written Loan Agreement terms with Plaintiff;
- (b) For Plaintiff's compensatory, consequential, incidental and economic damages in an amount to be proven at trial;
- (c) For pre-interest and post-interest (if applicable) at the highest rate allowed by law;
- (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses; and
- (e) For such other and further relief as this Court deems just and proper under the circumstances.

COUNT SIX

(Defendant Navient Committed Negligent Misrepresentation Under a Written Loan Agreement With Plaintiff When Refusing to Both Communicate With Plaintiff at Permanent Addresses Plaintiff Provided to Defendant Navient, And Reviewing Plaintiff's Requests for a Deferment or Forbearance Under the Terms of the Loan Agreement, Opting Instead to Declare And Enter a Default Under the Loan Agreement Against Plaintiff)

127. Plaintiff incorporates the allegations in the paragraphs above as if set forth fully herein.

128. Defendant Navient and Plaintiff were parties to a written Loan Agreement.

129. Defendant Navient omitted or failed to disclose material information to Plaintiff that even though the Loan Agreement terms required Defendant Navient to deliver correspondence and notices to Plaintiff at the permanent address that Plaintiff updated in writing to Defendant Navient, Defendant Navient would not deliver correspondence and notices to Plaintiff at the permanent address.

130. Defendant Navient omitted or failed to disclose material information to Plaintiff that even though the Loan Agreement terms require, "Upon [Plaintiff's] request,

1 [Defendant Navient] will provide [Plaintiff] with a deferment application that explains
2 [Plaintiff's] eligibility requirements, Defendant Navient would not provide Plaintiff with
3 a deferment application.
4

5 131. Defendant Navient omitted or failed to disclose material information to
6 Plaintiff that even though the Loan Agreement terms give Plaintiff a right to defer or
7 postpone repayments to Defendant Navient, while Plaintiff is, "...experiencing an
8 economic hardship as determined by federal law," Defendant Navient refused to defer or
9 postpone payments to Defendant Navient, while Plaintiff experienced an economic
10 hardship as determined by federal law.
11

12 132. Defendant Navient omitted or failed to disclose material information to
13 Plaintiff that even though the Loan Agreement terms require Defendant Navient to grant
14 Plaintiff a forbearance if Plaintiff has, "a monthly debt burden for Title IV loans that
15 collectively equals or exceeds 20% of [Plaintiff's] total monthly gross income,"
16 Defendant Navient refused to grant Plaintiff a forbearance.
17
18

19 133. Defendant Navient intended that when assuming its rights under the Loan
20 Agreement that Plaintiff would rely on the terms of the Loan Agreement and Defendant
21 Navient assumed rights in the Loan Agreement for that purpose.
22

23 134. Defendant Navient failed to exercise reasonable care or competence in
24 communicating that it would not comply with Plaintiff's Borrower's Rights under the
25 Loan Agreement either at the time Defendant Navient assumed its rights under the Loan
26 Agreement, or during the term of the Loan Agreement.
27

28 135. Plaintiff relied on the information memorialized in the Loan Agreement and

the Borrower's Rights and Responsibilities.

136. Plaintiff's reliance upon the terms set forth by the Loan Agreement and
Borrower's Rights and Responsibilities was justified.

137. As a result of Defendant Navient's misrepresentations Plaintiff, Plaintiff has suffered economic losses to be proven at trial, but not less than One Hundred Ninety One Thousand Six Hundred Seven Dollars and 43/100 (\$191,607.43).

THEREFORE, Plaintiff requests Judgment against Defendant Navient, as follows:

- (a) For an Order declaring that Defendant Navient committed a negligent misrepresentation against Plaintiff under the written Loan Agreement;
- (b) For Plaintiff's compensatory, consequential, incidental and economic damages in an amount to be proven at trial;
- (c) For pre-interest and post-interest (if applicable) at the highest rate allowed by law;
- (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses; and
- (e) For such other and further relief as this Court deems just and proper under the circumstances.

COUNT SEVEN

(Defendant Navient Committed Common Law Fraud Under a Written Loan Agreement With Plaintiff When Refusing to Both Communicate With Plaintiff at Permanent Addresses Plaintiff Provided to Defendant Navient And Reviewing Plaintiff's Requests for a Deferment or Forbearance Under the Terms of the Loan Agreement, Opting Instead to Declare And Enter a Default Under the Loan Agreement Against Plaintiff)

138. Plaintiff incorporates the allegations in the paragraphs above as if set forth fully herein.

139. Defendant Navient and Plaintiff were parties to a written Loan Agreement.

1 140. Defendant Navient, as assignee to the Loan Agreement, represented to
2 Plaintiff that Defendant Navient would deliver correspondence and notices to Plaintiff at
3 the permanent address Plaintiff provided and updated in writing to Defendant Navient.
4

5 141. Defendant Navient, as assignee to the Loan Agreement, represented to
6 Plaintiff that, “Upon [Plaintiff’s] request, [Defendant Navient] will provide [Plaintiff]
7 with a deferment application that explains [Plaintiff’s] eligibility requirements.”
8

9 142. Defendant Navient, as assignee to the Loan Agreement, represented to
10 Plaintiff that the Loan Agreement terms give Plaintiff a right to defer or postpone
11 repayments to Defendant Navient, while Plaintiff is, “...experiencing an economic
12 hardship as determined by federal law.”
13

14 143. Defendant Navient, as assignee to the Loan Agreement represented to
15 Plaintiff that the Loan Agreement terms require Defendant Navient to grant Plaintiff a
16 forbearance if Plaintiff has, “a monthly debt burden for Title IV loans that collectively
17 equals or exceeds 20% of [Plaintiff’s] total monthly gross income.”
18

19 144. The representations from Defendant Navient, as assignee to the Loan
20 Agreement were false, because: 1) Defendant Navient refused to send correspondence or
21 notices to the permanent addresses that Plaintiff provided to Defendant Navient; 2)
22 refused to provide Plaintiff with a deferment application that explained Plaintiff’s
23 eligibility requirements when requested by Plaintiff; 3) refused to defer or postpone
24 Plaintiff’s repayments to Defendant Navient under the Loan Agreement, while Plaintiff
25 experienced an ongoing economic hardship as determined by federal law; and 4) refused
26 to grant Plaintiff a forbearance to Plaintiff, despite Plaintiff having a monthly debt burden
27
28

1 for Title IV loans that collectively equals or exceeds 20% of Plaintiff's total monthly
2 gross income.

3 145. The representations from Defendant Navient as assignee to the Loan
4 Agreement were material, because the Loan Agreement terms were sufficiently important
5 to influence Plaintiff updating his then-permanent address with Defendant Navient and
6 requesting forbearance and deferment applications due to economic hardship.

7 146. Defendant Navient knew that its representations to Plaintiff under the Loan
8 Agreement were false, because: 1) Defendant Navient refused to deliver notices and
9 correspondence to the permanent addresses that Plaintiff provided to Defendant Navient;
10 and 2) Defendant Navient refused to either provide Plaintiff deferment and forbearance
11 applications to Plaintiff, prior to entering a default under the Loan Agreement and
12 declaring the Loan Agreement default to Defendant PHEAA.

13 147. Defendant Navient intended that Plaintiff would act upon the Loan
14 Agreement representations in the manner reasonably contemplated by Defendant
15 Navient, because: 1) Plaintiff previously complied with the Loan Agreement terms when
16 assignor, Sallie Mae, was the loan servicer; 2) Defendant Navient entered a default
17 against Plaintiff, claiming to Defendant PHEAA that Plaintiff breached the Loan
18 Agreement terms; and 3) Defendant Navient had an immediate pecuniary benefit in
19 Plaintiff defaulting under the Loan Agreement, because Defendant PHEAA (as guarantor)
20 would immediately pay (and immediately paid) Defendant Navient ninety seven percent
21 (97%) Loan Agreement's outstanding balance upon Defendant Navient declaring to
22 Defendant PHEAA that Plaintiff defaulted under the Loan Agreement.
23
24

1 148. Plaintiff did not know that Defendant Navient's representations under the
2 Loan Agreement were false, because assignor, Sallie Mae, had always complied with its
3 duties to Plaintiff under the Loan Agreement.
4

5 149. Plaintiff relied on the truth of the Loan Agreement representations assumed
6 by Defendant Navient when updating Plaintiff's then-permanent address with Defendant
7 Navient and timely requesting from Defendant Navient, deferment and forbearance
8 applications, due to Plaintiff's economic hardship.
9

10 150. Plaintiff's reliance upon the Defendant Navient's representations, as
11 memorialized by terms set forth by the Loan Agreement and Borrower's Rights and
12 Responsibilities was justified, because the assignor under the Loan Agreement, Sallie
13 Mae, had complied with the Loan Agreement terms, during its servicing of the Loan
14 Agreement.
15

16 151. Plaintiff's reliance upon the Defendant Navient's representations, as
17 memorialized by terms set forth by the Loan Agreement and Borrower's Rights and
18 Responsibilities was also justified, because Plaintiff was aware that under the Guarantor
19 Agreement with Defendant PHEAA, Defendant PHEAA requires Defendant Navient to
20 fully comply with its duties under the Loan Agreement, prior to entering a default against
21 Plaintiff.
22

23 152. As a result of Defendant Navient defrauding Plaintiff, Plaintiff has suffered
24 economic losses to be proven at trial, but not less than One Hundred Ninety One
25 Thousand Six Hundred Seven Dollars and 43/100 (\$191,607.43).
26

27 THEREFORE, Plaintiff requests Judgment against Defendant Navient, as follows:
28

- (a) For an Order declaring that Defendant Navient committed a common law fraud against Plaintiff under the written Loan Agreement;
- (b) For Plaintiff's compensatory, consequential, incidental and economic damages in an amount to be proven at trial;
- (c) For pre-interest and post-interest (if applicable) at the highest rate allowed by law;
- (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses; and
- (e) For such other and further relief as this Court deems just and proper under the circumstances.

COUNT EIGHT

(Defendant Navient Committed Defamation/False Light/Libel Against Plaintiff When Entering a Default Against Plaintiff Under the Loan Agreement And Reporting the Default to Credit Reporting Agencies And Defendant PHEAA)

153. Plaintiff incorporates the allegations in the paragraphs above as if set forth fully herein.

154. Defendant Navient when posting the false statement that Plaintiff defaulted under a Loan Agreement with Defendant Navient to credit reporting agencies and Defendant PHEAA, made a public and patently false statement about Plaintiff.

155. Defendant Navient made its statement about Plaintiff with actual malice, intent and reckless disregard to the statement's truth, because Defendant Navient: 1) ignored Plaintiff's correspondence to Defendant Navient, updating Plaintiff's permanent addresses, as required under the Loan Agreement; 2) ignored Plaintiff's correspondence to Defendant Navient, requesting Defendant Navient review Plaintiff's requests for student loan deferment or forbearance, due to Plaintiff's economic hardship; and 3)

1 illegally defaulted Plaintiff under the Loan Agreement for improper pecuniary gain,
2 evidenced by the guarantor paying Defendant ninety seven percent (97%) of the Loan
3 Agreement's outstanding loan balance in exchange for Defendant Navient's false
4 statement that Plaintiff defaulted under the Loan Agreement.
5

6 156. As a result of Defendant Navient's false statement that Plaintiff defaulted
7 under the Loan Agreement, Plaintiff has suffered general damages from loss of his
8 reputation in amounts to be proven at trial, but not less than Seventy Five Thousand
9 Dollars (\$75,000).

10 157. As a result of Defendant Navient's false statement that Plaintiff defaulted
11 under the Loan Agreement, Plaintiff has suffered special damages to Plaintiff's property,
12 business, trade, profession and/or occupation in amounts to be proven at trial, but not less
13 than Seventy Five Thousand Dollars (\$75,000).

14 158. As a result of Defendant Navient's false statement that Plaintiff defaulted
15 under the Loan Agreement, Plaintiff is entitled to exemplary damages to be proven at
16 trial, but not less than Seventy Five Thousand Dollars (\$75,000).

17 THEREFORE, Plaintiff requests Judgment against Defendant Navient, as follows:

18 (a) For an Order declaring that Defendant Navient made false, public
19 statements that Plaintiff defaulted under the Loan Agreement;

20 (b) For Plaintiff's general, special, and exemplary damages in an amount to be
21 proven at trial;

22 (c) For pre-interest and post-interest (if applicable) at the highest rate allowed
23 by law;

24 (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses;

1 and

2 (e) For such other and further relief as this Court deems just and proper under
3 the circumstances.

4 **COUNT NINE**

5 **(Defendant PHEAA And Its Agent Defendant Performant Committed
6 Defamation/False Light/Libel Against Plaintiff When Reporting the Default of the
7 Loan Agreement to Credit Reporting Agencies)**

8 159. Plaintiff incorporates the allegations in the paragraphs above as if set forth
9 fully herein.

10 160. Defendant Performant on behalf of Defendant PHEAA posting the false
11 statement that Plaintiff defaulted under a Loan Agreement with Defendant Navient to
12 credit reporting agencies, made a public and patently false statement about Plaintiff.
13

14 161. Defendants PHEAA and Performant made its statements about Plaintiff
15 with actual malice, intent and reckless disregard to the statement's truth, because
16 Defendants PHEAA and Performant: 1) had a reasonable opportunity to review
17 correspondence and documents exchanged between Defendant Navient and Plaintiff upon
18 Defendant PHEAA acquisition of rights under the Loan Agreement; and 2) despite
19 reviewing correspondence and documents exchanged between Defendant Navient and
20 Plaintiff upon Defendant PHEAA acquisition of rights under the Loan Agreement,
21 nevertheless falsely stated to numerous credit reporting agencies that Plaintiff had
22 defaulted under the Loan Agreement.
23

24 162. As a result of Defendants PHEAA's and Performant's false statements that
25 Plaintiff defaulted under the Loan Agreement, Plaintiff has suffered general damages
26 from loss of his reputation in amounts to be proven at trial, but not less than Seventy Five
27

Thousand Dollars (\$75,000).

163. As a result of Defendants PHEAA's and Performant's false statements that Plaintiff defaulted under the Loan Agreement, Plaintiff has suffered special damages to Plaintiff's property, business, trade, profession and/or occupation in amounts to be proven at trial, but not less than Seventy Five Thousand Dollars (\$75,000).

164. Defendants PHEAA's and Performant's false statements that Plaintiff defaulted under the Loan Agreement, Plaintiff is entitled to exemplary damages to be proven at trial, but not less than Seventy Five Thousand Dollars (\$75,000).

THEREFORE, Plaintiff requests Judgment against Defendants PHEAA and Performant, as follows:

- (a) For an Order declaring that Defendant Navient made false, public statements that Plaintiff defaulted under the Loan Agreement;
- (b) For Plaintiff's general, special, and exemplary damages in an amount to be proven at trial;
- (c) For pre-interest and post-interest (if applicable) at the highest rate allowed by law;
- (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses; and
- (e) For such other and further relief as this Court deems just and proper under the circumstances.

JURY TRIAL

165. Plaintiff hereby requests and demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for damages for judgment against Defendants as

1 || follows:

- a) General damages in amounts to be proven at trial, as to the causes of action, claims and theories of relief alleged herein;
- b) Punitive damages against the individually named Defendants in amounts deemed just and reasonable as to the causes of action, claims and theories of relief alleged herein;
- c) Costs against all Defendants;
- d) Attorneys fees against all Defendants, should attorneys enter appearances on behalf of Plaintiff; and
- e) Such other and further relief which may seem just and reasonable under the circumstances.

RESPECTFULLY SUBMITTED this 9th day of November, 2018.

By: /s/: Devin Andrich
Devin Andrich
Plaintiff Pro Se

1 CERTIFICATE OF SERVICE
2
3
4
5

6 I hereby certify that on November 9, 2018, I electronically transmitted the
7 foregoing document to the Clerk's Office, using the CM/ECF System for filing to the
8 following recipients:
9

10 The Honorable Douglas L. Rayes
11 Judge, United States District Court of Arizona
12 401 West Washington Street, Suite 526
13 Phoenix, Arizona 85003-2162
14

15 Benjamin S. Noren
16 Hinshaw & Culbertson LLP
17 800 Third Avenue, 13th Florr
18 New York, New York 10022
19 *Attorneys for Defendant Navient*
20

21 By: /s/: Devin Andrich
22 Devin Andrich
23
24
25
26
27
28